

AMENDED IN ASSEMBLY JULY 1, 2015

AMENDED IN SENATE APRIL 30, 2015

AMENDED IN SENATE APRIL 20, 2015

SENATE BILL

No. 588

Introduced by Senator De León

(Principal coauthor: Assembly Member Roger Hernández)

(Coauthors: Assembly Members Alejo and Gray)

February 26, 2015

An act to add Chapter 10 (commencing with Section 690.020) to Division 1 of Title 9 of Part 2 of the Code of Civil Procedure, and to amend Section 98 of, and to add Sections 96.8, 238, 238.1, 238.2, 238.3, 238.4, 238.5, and 558.1 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 588, as amended, De León. Employment: nonpayment of wages: Labor Commissioner: judgment enforcement.

(1) The Enforcement of Judgments Law provides for the enforcement of money judgments and other civil judgments. Under that law, a judgment creditor may levy upon the property of a judgment debtor to satisfy a judgment, and a levying officer holds the property until the final determination of any exemptions claimed by the judgment debtor.

This bill would enact special provisions for the enforcement of judgments against an employer arising from the employer's nonpayment of wages for work performed in this state. The bill would authorize the Labor Commissioner to use any of the existing remedies available to a judgment creditor and to act as a levying officer when enforcing a judgment pursuant to a writ of execution, as provided.

The bill would also authorize the Labor Commissioner to issue a notice of levy, as specified, if the levy is for a deposit, credits, money, or property in the possession or under the control of a bank or savings and loan association or for an account receivable or other general intangible owed to the judgment debtor by an account debtor.

(2) Existing law authorizes the Labor Commissioner to investigate employee complaints and to provide for a hearing in any action to recover wages, penalties, and other demands for compensation. Existing law requires the Labor Commissioner to determine all matters arising under his or her jurisdiction. Existing law makes any employer or other person acting on behalf of an employer who violates or causes to be violated specified provisions regulating hours and days of work in any order of the Industrial Welfare Commission to be subject to a civil penalty, as specified.

This bill would authorize the Labor Commissioner to provide for a hearing against any employer or other person acting on behalf of an employer for a violation of those provisions regulating hours and days of work in any order of the Industrial Welfare Commission. The bill would also authorize any person liable for a violation of those provisions to be held liable in various other actions relating to, among other things, an employer's failure to pay wages.

Under existing law, within a specified period of time after service of notice of an order, decision, or award, the parties are authorized to seek review by filing an appeal to the superior court, where the appeal is required to be heard *de novo*.

This bill, *beginning 20 days* after a judgment is entered by a court of competent jurisdiction in favor of the Labor Commissioner, or in favor of any employee pursuant to an appeal, would authorize the Labor Commissioner to, with the consent of any employee in whose favor the judgment is entered, collect any outstanding amount of the judgment by mailing a notice of levy upon all persons having in their possession, or who will have in their possession or under their control, any credits, money, or property, belonging to the judgment debtor, or who owe any debt to the judgment debtor at the time they receive the notice of levy. The bill would also require the judgment debtor to be served with a copy of the notice of levy. The bill would require any person who surrenders to the Labor Commissioner any credits, money, or property, or pays the debts owed to the judgment debtor to be discharged from any obligation or liability to the judgment debtor to the extent of the amount paid to the Labor Commissioner as a result of the levy. The bill

would make any person noticed with a levy who fails or refuses to surrender any credits, money, or property or pay any debts owed to the judgment debtor liable in his or her own person or estate to the Labor Commissioner in an amount equal to the value of the credits, money, or property or in the amount of the levy, as provided.

If a final judgment against an employer arising from the employer's nonpayment of wages for work performed in this state remains unsatisfied after a specified period of time after the time to appeal has expired and no appeal is pending, the bill would prohibit an employer from continuing to conduct business in this state unless the employer has obtained a bond from a surety company admitted and has filed a copy of that bond with the Labor Commissioner, as provided. As an alternative to the bond requirement, the bill would authorize the employer to provide the Labor Commissioner with a notarized copy of an accord reached with an individual holding an unsatisfied final judgment. The bill would make any employer conducting business without satisfying the bond requirement subject to a specified civil penalty. The bill, where an employer is conducting business in violation of the bond requirement, would authorize the Labor Commissioner to issue and serve on such employer a stop order prohibiting the use of employee labor by the employer until the employer complies with the bond requirement provided that the stop order would not compromise or imperil public safety or the life, health, and care of vulnerable individuals. The bill would make the failure of an employer, officer, or anyone having direction, management, or control of any place of employment or of employees to observe a stop order guilty of a misdemeanor. By creating a new crime, the bill would impose a state-mandated local program. Subject to required prior notice to the employer, the bill would authorize the Labor Commissioner to create a lien on any real or personal property in California of an employer that is conducting business without satisfying the bond requirement for the full amount of any wages, interest, ~~penalties, and attorney's fees and~~ *penalties* claimed to be owed to an ~~employee~~ *employee, as specified*.

Existing law generally provides for the licensure and regulation of various types of long-term care facilities by the State Department of Public Health and the State Department of Social Services.

If a final judgment against an employer arising from the employer's nonpayment of wages remains unsatisfied after the time to appeal has expired and there is no pending appeal, this bill would prohibit an employer in the long-term care industry, as specified, from obtaining

a license or renewing that license if the employer is conducting business without obtaining a bond or reaching an accord with an individual holding an unsatisfied judgment, as described above. The bill would make a specified entity that contracts with an employer to perform services in the property services, as defined, or long-term care industries jointly and severally liable where the entity has been named as a defendant with the employer for any unpaid wages and the employer was found liable for those unpaid wages pursuant to a specified action, as provided.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 10 (commencing with Section 690.020)
2 is added to Division 1 of Title 9 of Part 2 of the Code of Civil
3 Procedure, to read:

4
5 CHAPTER 10. ENFORCEMENT OF JUDGMENTS BY LABOR
6 COMMISSIONER
7

8 690.020. For the purpose of the remedies provided under this
9 chapter, jurisdiction is conferred upon the superior court.

10 690.030. (a) Except as otherwise provided by statute, whenever
11 a warrant or notice of levy may properly be issued by the Labor
12 Commissioner pursuant to Section 96.8 of the Labor Code, and
13 the warrant may be levied with the same effect as a levy pursuant
14 to a writ of execution, the Labor Commissioner may use any of
15 the remedies available to a judgment creditor, including, but not
16 limited to, those provided in Chapter 6 (commencing with Section
17 708.010) of Division 2.

18 (b) The proper court for the enforcement of the remedies
19 provided under this chapter is the superior court of any of the
20 following counties:

21 (1) The county where the employee resides.

1 (2) The county where the judgment debtor resides.

2 (3) The county where the person against whom the levy or
3 warrant was issued resides.

4 690.040. (a) Whenever the Labor Commissioner, pursuant to
5 Section 96.8 of the Labor Code, levies upon property pursuant to
6 a warrant or notice of levy for the collection of an unsatisfied
7 judgment or award:

8 (1) If the debtor is a natural person, the debtor is entitled to the
9 same exemptions to which a judgment debtor is entitled. Except
10 as provided in subdivisions (b) and (c), the claim of exemption
11 shall be made, heard, and determined as provided in Chapter 4
12 (commencing with Section 703.010) of Division 2 in the same
13 manner as if the property were levied upon under a writ of
14 execution.

15 (2) A third person may claim ownership or the right to
16 possession of the property or a security interest in or lien on the
17 property. Except as provided in subdivisions (b) and (c) or as
18 otherwise provided by statute, the third-party claim shall be made,
19 heard, and determined as provided in Division 4 (commencing
20 with Section 720.010) in the same manner as if the property were
21 levied upon under a writ of execution.

22 (b) In the case of a warrant or notice of levy issued pursuant to
23 Section 96.8 of the Labor Code, the claim of exemption or the
24 third-party claim shall be filed with the Labor Commissioner.

25 (c) A claim of exemption or a third-party claim pursuant to this
26 section shall be heard and determined in a superior court specified
27 in subdivision (b) of Section 690.030.

28 690.050. (a) Notwithstanding any other law, in the case of a
29 writ of execution issued by a court of competent jurisdiction
30 pursuant to Chapter 3 (commencing with Section 699.010) and
31 Chapter 5 (commencing with Section 706.010) of Division 2, the
32 Labor Commissioner, when collecting an unsatisfied judgment or
33 award pursuant to Section 96.8 of the Labor Code, may perform
34 the duties of the levying officer, except that the Labor
35 Commissioner need not give himself or herself the notices that the
36 levying officer is required to serve on a judgment creditor or the
37 notices that a judgment creditor is required to give to the levying
38 officer.

39 (b) Notwithstanding subdivision (a) of Section 700.140 *and*
40 *Sections 700.150, 700.160, and Section 700.170*, if the levy is for

1 a deposit, credits, money, or property in the possession or under
2 the control of a bank or savings and loan association or for an
3 account receivable or other general intangible owed to the judgment
4 debtor by an account debtor, the Labor Commissioner may deliver
5 or mail a notice of levy to a centralized location designated by the
6 bank or savings and loan association or, in the case of an account
7 receivable or other general intangible, to the agent for service of
8 process of the account debtor. If the notice of levy is received at
9 the designated central location for the bank or savings and loan
10 association, the notice of levy will apply to all deposits, credits,
11 money, and personal property held by the bank or savings and loan
12 association regardless of the location of that property. The notice
13 of levy may be issued directly by the Labor Commissioner, whether
14 or not a court has issued a writ of execution, and shall contain all
15 of the information required to be included in a writ of execution
16 under Section 699.520 and in a notice of levy under Section
17 699.540.

18 SEC. 2. Section 96.8 is added to the Labor Code, to read:

19 96.8. (a) Notwithstanding any other law, *beginning 20 days*
20 after a judgment is entered by a court of competent jurisdiction in
21 favor of the Labor Commissioner, or in favor of any employee
22 pursuant to *subdivision (e) of* Section 98.2, the Labor
23 Commissioner may, with the consent of any employee in whose
24 favor the judgment is entered, collect any outstanding amount of
25 the judgment by mailing a notice of levy upon all persons having
26 in their possession, or who will have in their possession or under
27 their control, any credits, money, or property belonging to the
28 judgment debtor, or who owe any debt to the judgment debtor at
29 the time they receive the notice of levy.

30 (b) Notwithstanding any other law, the Labor Commissioner
31 may execute a levy on any property that may be levied under
32 Section 700.140, 700.150, 700.160, or 700.170 of the Code of
33 Civil Procedure by mailing a notice of levy to the person against
34 whom the levy is directed and serving a copy on the judgment
35 debtor. The notice of levy shall contain all of the information
36 required to be included in a writ of execution under Section
37 699.520 of the Code of Civil Procedure and in a notice of levy
38 under Section 699.540 of the Code of Civil Procedure.

39 (c) Any person, upon whom a levy has been noticed having in
40 his or her possession or under his or her control any credits, money,

1 or property belonging to the judgment debtor or owing any debts
2 to the judgment debtor at the time of receipt of the levy or coming
3 into his or her possession or under his or her control within one
4 year of receipt of the notice of levy, shall surrender the credits,
5 money, or property to the Labor Commissioner or pay to the Labor
6 Commissioner the amount of any debt owed to the judgment debtor
7 within 10 days of service of the levy, and shall surrender the credits
8 or property, or the amount of any debt owing to the judgment
9 debtor coming into his or her own possession or control within
10 one year of receipt of the notice of levy within 10 days of the date
11 of coming into possession or control of the credits or property or
12 the amount of any debt owed to the judgment debtor.

13 (d) Any person who surrenders to the Labor Commissioner
14 pursuant to this section any credits, money, or property, or pays
15 the debts owed to the judgment debtor, shall be discharged from
16 any obligation or liability to the judgment debtor to the extent of
17 the amount paid to the Labor Commissioner as a result of the levy.

18 (e) If the levy is made on a deposit or credits, money, or property
19 in the possession or under the control of a bank, savings and loan
20 association, or other financial institution as defined by Section
21 669a(d)(1) of Title 42 of the United States Code, the notice of levy
22 may be delivered or mailed to a centralized location designated
23 by the bank, savings and loan association, or other financial
24 institution pursuant to Section 690.050 of the Code of Civil
25 Procedure.

26 (f) Any person who is noticed with a levy pursuant to this section
27 and who fails or refuses to surrender any credits, money, or
28 property or pay any debts owed to the judgment debtor shall be
29 liable in his or her own person or estate to the Labor Commissioner
30 in an amount equal to the value of the credits, money, or other
31 property or in the amount of the levy, up to the amount specified
32 in the levy.

33 (g) The fees, commissions, expenses, and the reasonable costs
34 associated with the sale of property levied upon by warrant or levy
35 pursuant to this section, including, but not limited to, appraisers'
36 fees, auctioneers' fees, and advertising fees are an obligation of
37 the judgment debtor and may be collected from the judgment debtor
38 by virtue of the warrant or levy or in any other manner as though
39 these items were part of the judgment or award outstanding.

1 (h) This section shall not apply to the judgment debtor's interest
2 in real property.

3 (i) *This section shall not apply if enforcement of the judgment*
4 *has been stayed on appeal pursuant to Chapter 2 (commencing*
5 *with Section 916) of Title 13 of Part 2 of the Code of Civil*
6 *Procedure.*

7 SEC. 3. Section 98 of the Labor Code is amended to read:

8 98. (a) The Labor Commissioner is authorized to investigate
9 employee complaints. The Labor Commissioner may provide for
10 a hearing in any action to recover wages, penalties, and other
11 demands for compensation, including liquidated damages if the
12 complaint alleges payment of a wage less than the minimum wage
13 fixed by an order of the Industrial Welfare Commission or by
14 statute, properly before the division or the Labor Commissioner,
15 including orders of the Industrial Welfare Commission, and shall
16 determine all matters arising under his or her jurisdiction. The
17 Labor Commissioner may also provide for a hearing against any
18 employer or other person acting on behalf of an employer for a
19 violation of Section 558. It is within the jurisdiction of the Labor
20 Commissioner to accept and determine claims from holders of
21 payroll checks or payroll drafts returned unpaid because of
22 insufficient funds, if, after a diligent search, the holder is unable
23 to return the dishonored check or draft to the payee and recover
24 the sums paid out. Within 30 days of the filing of the complaint,
25 the Labor Commissioner shall notify the parties as to whether a
26 hearing will be held, whether action will be taken in accordance
27 with Section 98.3, or whether no further action will be taken on
28 the complaint. If the determination is made by the Labor
29 Commissioner to hold a hearing, the hearing shall be held within
30 90 days of the date of that determination. However, the Labor
31 Commissioner may postpone or grant additional time before setting
32 a hearing if the Labor Commissioner finds that it would lead to an
33 equitable and just resolution of the dispute. A party who has
34 received actual notice of a claim before the Labor Commissioner
35 shall, while the matter is before the Labor Commissioner, notify
36 the Labor Commissioner in writing of any change in that party's
37 business or personal address within 10 days after the change in
38 address occurs.

1 It is the intent of the Legislature that hearings held pursuant to
2 this section be conducted in an informal setting preserving the
3 rights of the parties.

4 (b) When a hearing is set, a copy of the complaint, which shall
5 include the amount of compensation requested, together with a
6 notice of time and place of the hearing, shall be served on all
7 parties, personally or by certified mail, or in the manner specified
8 in Section 415.20 of the Code of Civil Procedure.

9 (c) Within 10 days after service of the notice and the complaint,
10 a defendant may file an answer with the Labor Commissioner in
11 any form as the Labor Commissioner may prescribe, setting forth
12 the particulars in which the complaint is inaccurate or incomplete
13 and the facts upon which the defendant intends to rely.

14 (d) No pleading other than the complaint and answer of the
15 defendant or defendants shall be required. Both shall be in writing
16 and shall conform to the form and the rules of practice and
17 procedure adopted by the Labor Commissioner.

18 (e) Evidence on matters not pleaded in the answer shall be
19 allowed only on terms and conditions the Labor Commissioner
20 shall impose. In all these cases, the claimant shall be entitled to a
21 continuance for purposes of review of the new evidence.

22 (f) If the defendant fails to appear or answer within the time
23 allowed under this chapter, no default shall be taken against him
24 or her, but the Labor Commissioner shall hear the evidence offered
25 and shall issue an order, decision, or award in accordance with the
26 evidence. A defendant failing to appear or answer, or subsequently
27 contending to be aggrieved in any manner by want of notice of the
28 pendency of the proceedings, may apply to the Labor
29 Commissioner for relief in accordance with Section 473 of the
30 Code of Civil Procedure. The Labor Commissioner may afford
31 this relief. No right to relief, including the claim that the findings
32 or award of the Labor Commissioner or judgment entered thereon
33 are void upon their face, shall accrue to the defendant in any court
34 unless prior application is made to the Labor Commissioner in
35 accordance with this chapter.

36 (g) All hearings conducted pursuant to this chapter are governed
37 by the division and by the rules of practice and procedure adopted
38 by the Labor Commissioner.

39 (h) (1) Whenever a claim is filed under this chapter against a
40 person operating or doing business under a fictitious business

1 name, as defined in Section 17900 of the Business and Professions
2 Code, which relates to the person's business, the division shall
3 inquire at the time of the hearing whether the name of the person
4 is the legal name under which the business or person has been
5 licensed, registered, incorporated, or otherwise authorized to do
6 business.

7 (2) The division may amend an order, decision, or award to
8 conform to the legal name of the business or the person who is the
9 defendant to a wage claim, if it can be shown that proper service
10 was made on the defendant or his or her agent, unless a judgment
11 had been entered on the order, decision, or award pursuant to
12 subdivision (d) of Section 98.2. The Labor Commissioner may
13 apply to the clerk of the superior court to amend a judgment that
14 has been issued pursuant to a final order, decision, or award to
15 conform to the legal name of the defendant, if it can be shown that
16 proper service was made on the defendant or his or her agent.

17 SEC. 4. Section 238 is added to the Labor Code, to read:

18 238. (a) If a final judgment against an employer arising from
19 the employer's nonpayment of wages for work performed in this
20 state remains unsatisfied after a period of ~~10~~ 20 days after the time
21 to appeal therefrom has expired and no appeal therefrom is pending,
22 the employer shall not continue to conduct business in this state
23 unless the employer has obtained a bond from a surety company
24 admitted to do business in this state and has filed a copy of that
25 bond with the Labor Commissioner. The principal sum of the bond
26 shall not be less than one hundred ~~and~~ fifty thousand dollars
27 (\$150,000).

28 (b) In lieu of filing and maintaining the bond required by this
29 section, the employer may provide the Labor Commissioner with
30 a notarized copy of an accord reached with an individual holding
31 an unsatisfied final judgment. *If the accord provides for the*
32 *judgment to be paid in installments, and an installment payment*
33 *is not made, the employer is no longer excused from satisfying the*
34 *bond requirement of this section.*

35 (c) (1) The bond required by this section shall be in favor of,
36 and payable to, the people of the State of California, and shall be
37 for the benefit of any employee damaged by his or her employer's
38 failure to pay wages, including any interest, penalties, and
39 attorney's fees.

1 (2) This section shall not require a bond in favor of employees
2 covered by a bona fide collective bargaining agreement, if the
3 agreement expressly provides for wages, hours of work, working
4 conditions, a process to resolve disputes concerning nonpayment
5 of wages, and a waiver of the bond required by this section.

6 (3) Thirty days prior to the cancellation or termination of any
7 bond required by this section, the surety shall send written notice
8 to both the employer and the Labor Commissioner, identifying the
9 bond and the date of the cancellation or termination. If the bond
10 is terminated or canceled, the employer shall obtain a new surety
11 bond and file a copy of that bond with the Labor Commissioner
12 to remain in compliance with this section.

13 (d) For purposes of this section, a judgment also includes any
14 final arbitration award where the time to file a petition for a trial
15 de novo or a petition to vacate or correct the arbitration award has
16 expired and no petition is pending.

17 (e) An employer similar in operation and ownership to an
18 employer with an unsatisfied final judgment for unpaid wages,
19 upon receiving written notice of the unsatisfied judgment, shall
20 be deemed the same employer for purposes of this section if (1)
21 the employees of the subsequent employer are engaged in
22 substantially the same work in substantially the same working
23 conditions under substantially the same supervisors or (2) if the
24 new entity has substantially the same production process or
25 operations, produces substantially the same products or offers
26 substantially the same services, and has substantially the same
27 body of customers.

28 (f) Any employer, or other person acting on behalf of an
29 employer, that conducts business in violation of this section shall
30 be subject to a civil penalty of two thousand five hundred dollars
31 (\$2,500). Any employer that has previously paid a penalty pursuant
32 to this section shall be subject to an additional penalty of one
33 hundred dollars (\$100) for each calendar day that the employer
34 conducts business in violation of this section; however, this
35 additional amount shall not exceed one hundred thousand dollars
36 (\$100,000).

37 SEC. 5. Section 238.1 is added to the Labor Code, to read:

38 238.1. (a) Where an employer is conducting business in
39 violation of Section 238, the Labor Commissioner may issue and
40 serve on that employer a stop order prohibiting the use of employee

1 labor by that employer until the employer's compliance with
2 Section 238, provided that the stop order would not compromise
3 or imperil public safety or the life, health, and care of vulnerable
4 individuals. The stop order shall also prohibit the employer from
5 continuing to provide services by subcontracting for labor. The
6 stop order shall become effective immediately upon the service of
7 the order. Any employee affected by the work stoppage shall be
8 paid by the employer for such time lost, not exceeding 10 days,
9 pending compliance by the employer. The employer may protest
10 the stop order by making and filing with the Labor Commissioner
11 a written request for a hearing within 20 days after service of the
12 stop order. The hearing shall be held within ~~five~~ *five* days from the
13 date of filing the request. The Labor Commissioner shall notify
14 the employer of the time and place of the hearing by mail. At the
15 conclusion of the hearing, the stop order shall be immediately
16 affirmed or dismissed, and within 24 hours thereafter, the Labor
17 Commissioner shall issue and serve on all parties to the hearing
18 by registered or certified mail a written notice of findings,
19 accompanied by written findings. A writ of mandate may be taken
20 from the findings to the appropriate superior court. The writ shall
21 be taken within 45 days after the mailing of the notice of findings
22 accompanied by written findings.

23 (b) Failure of an employer, officer, or anyone having direction,
24 management, or control of any place of employment or of
25 employees to observe a stop order issued and served upon him or
26 her pursuant to this section is guilty of a misdemeanor punishable
27 by imprisonment in the county jail not exceeding 60 days or by a
28 fine not exceeding ten thousand dollars (\$10,000), or both. The
29 Labor Commissioner may also obtain injunctive and other relief
30 from the courts to carry out the purposes of this section.

31 SEC. 6. Section 238.2 is added to the Labor Code, to read:

32 238.2. (a) The Labor Commissioner may create a lien on any
33 real property in California of an employer that is conducting
34 business in violation of Section 238 for the full amount of any
35 wages, interest, ~~penalties, and attorney's fees~~ *and penalties* claimed
36 to be owed to any employee. *To the extent attorney's fees are*
37 *specifically allowed to be recovered by this code, such as by, but*
38 *not limited to, subdivision (f) of Section 2673.1 and Section 2802,*
39 *during a hearing pursuant to Section 98, the Labor Commissioner*
40 *may include that amount in the lien.*

1 (b) The Labor Commissioner may create the lien provided in
2 this section by recording a certificate of lien using the same
3 procedure applicable under subsection (g) of Section 98.2.

4 (c) The Labor Commissioner shall issue a certificate of release,
5 releasing the lien created under this section, upon final satisfaction
6 of any judgment entered in favor of the employee, upon
7 adjudication of the claim in favor of the employer, upon the filing
8 of a surety bond pursuant to Section 238. The certificate of release
9 may be recorded by the employer at the employer's expense.

10 (d) Unless the lien is satisfied or released, a lien under this
11 section shall continue until 10 years from the date of its creation.

12 (e) Prior to using this lien procedure in this section, the Labor
13 Commissioner shall provide at least 20 days' preliminary notice
14 to the employer. The preliminary notice shall advise the employer
15 of the nature and amount of the employee's claim and of the Labor
16 Commissioner's authority to create a lien on the employer's
17 property to secure payment of the claim.

18 (f) The Labor Commissioner shall serve the preliminary notice
19 on the employer by certified mail with return receipt requested,
20 evidenced by a certificate of mailing, postage prepaid, addressed
21 to the employer at the employer's residence or place of business.
22 The Labor Commissioner shall serve a copy of any notice of lien
23 on the employer in the same manner.

24 (g) Upon entry of a final order, decision, or award issued in an
25 appeal pursuant to Section 98.2 against the employer for unpaid
26 wages, or entry of a final judgment against the employer for unpaid
27 wages in an action filed in the superior court, the Labor
28 Commissioner may bring an action to foreclose on any lien created
29 pursuant to this section.

30 (h) A lien created pursuant to this section is in addition to any
31 other lien rights available to an employee or to the Labor
32 Commissioner and shall not be construed to limit those rights.

33 SEC. 7. Section 238.3 is added to the Labor Code, to read:

34 238.3. (a) The Labor Commissioner may create a lien on any
35 personal property in California of an employer that conducts
36 business in violation of Section 238 for the full amount of any
37 wages, interest, ~~penalties, and attorney's fees and penalties~~ claimed
38 to be owed to any employee. *To the extent attorney's fees are*
39 *specifically allowed to be recovered by this code, such as by, but*
40 *not limited to, subdivision (f) of Section 2673.1 and Section 2802,*

1 *during a hearing pursuant to Section 98, the Labor Commissioner*
2 *may include that amount in the lien.*

3 (b) The Labor Commissioner may create the lien provided in
4 this section by filing a notice of lien with the Secretary of State
5 on the standard form of initial financing statement pursuant to
6 Section 9521 of the Commercial Code. The standard form shall
7 be completed in the following manner:

8 (1) The Labor Commissioner shall be identified as the secured
9 party.

10 (2) The employer shall be identified as the debtor.

11 (3) The description of the collateral shall include the following
12 statements:

13 (A) A statement of the Labor Commissioner's demand for
14 payment of the wages, penalties, interest, and attorney's fees, *if*
15 *applicable*. The statement shall specify the amount owed to the
16 employee, and if the amount is estimated, shall provide an
17 explanation for the basis of the estimate.

18 (B) A general statement of the kind of work furnished by the
19 employee and the dates of employment.

20 (c) For the purpose of the Secretary of State's index pursuant
21 to Sections 9515, 9516, and 9522 of the Commercial Code and for
22 the purpose of the issuance of a certificate pursuant to Section
23 9519 or 9528 of the Commercial Code, the Secretary of State shall
24 treat a notice of lien pursuant to this section as a financing
25 statement.

26 (d) The lien attaches to all personal property that is owned by
27 the employer at the time of the filing of the notice of lien, or that
28 is subsequently acquired by the employer, that can be made subject
29 to a security interest under the Commercial Code.

30 (e) The Labor Commissioner shall file a termination statement,
31 releasing the lien created under this section, upon final satisfaction
32 of any judgment entered in favor of the employee, upon
33 adjudication of the claim in favor of the employer, upon the filing
34 of a surety bond in a form acceptable to the Labor Commissioner
35 sufficient to secure the claim.

36 (f) The notice of claim of lien to which the termination statement
37 relates ceases to be effective upon the filing of a termination
38 statement with the office of the Secretary of State. A termination
39 statement for a notice of lien may be filed in the same manner as

1 a termination statement for a financing statement filed pursuant
2 to Section 9513 of the Commercial Code.

3 (g) Unless the lien is satisfied or released, a lien under this
4 section shall continue until 10 years from the date of its creation.

5 (h) Prior to using this lien procedure in this section, the Labor
6 Commissioner shall provide at least 20 days' preliminary notice
7 to the employer. The preliminary notice shall advise the employer
8 of the nature and amount of the employee's claim and of the Labor
9 Commissioner's authority to create a lien on the employer's
10 personal property to secure payment of the claim.

11 (i) The Labor Commissioner shall serve the preliminary notice
12 on the employer by certified mail with return receipt requested,
13 evidenced by a certificate of mailing, postage prepaid, addressed
14 to the employer at the employer's residence or place of business.
15 The Labor Commissioner shall serve a copy of any notice of lien
16 on the employer in the same manner.

17 (j) Upon entry of a final order, decision, or award issued in an
18 appeal pursuant to Section 98.2 against the employer for unpaid
19 wages, or entry of a final judgment against the employer for unpaid
20 wages in an action filed in the superior court, the Labor
21 Commissioner may bring an action to foreclose on any lien created
22 pursuant to this section.

23 (k) A lien created pursuant to this section in addition to any
24 other lien rights available to an employee or to the Labor
25 Commissioner shall not be construed to limit those rights.

26 SEC. 8. Section 238.4 is added to the Labor Code, to read:

27 238.4. (a) An employer in the long-term care industry that is
28 also required to obtain a license from the State Department of
29 Public Health or the State Department of Social Services pursuant
30 to Division 2 (commencing with Section 1200) of the Health and
31 Safety Code may not obtain a license or renew that license if the
32 employer is conducting business in violation of Section 238.

33 (b) For purposes of this section "long-term care" means the
34 operation of a skilled nursing facility, intermediate care facility,
35 congregate living facility, hospice facility, adult residential facility,
36 residential care facility for persons with chronic life-threatening
37 illness, residential care facility for the elderly, continuing care
38 retirement community, home health agency, or home care
39 organization, as those terms are used in Division 2 (commencing
40 with Section 1200) of the Health and Safety Code.

SEC. 9. Section 238.5 is added to the Labor Code, to read:

238.5. (a) An individual, partnership, corporation, limited liability company, joint venture, or association that, as part of its business, contracts with an employer to perform services in the property services or long-term care industries shall be jointly and severally liable, where the individual, partnership, corporation, limited liability company, joint venture, or association has been named as a defendant and provided notice pursuant to subdivision (b) of Section 98, with the employer for any unpaid wages, including interest, and the employer was found liable for those unpaid wages by an order, decision or award issued pursuant to Section 98.2, to the extent the amounts are for services performed under that contract. The issue of joint and several liability under this section may be determined by the Labor Commissioner in a proceeding under Section 98.

(b) The joint and several liability provided by this section shall not apply to unpaid wages owed to employees covered by a bona fide collective bargaining agreement, if the agreement expressly provides for wages, hours of work, working conditions, a process to resolve disputes concerning nonpayment of wages, and a waiver of the joint and several liability provided by this section.

(c) An employer that contracts to provide services in the property services or long-term care industries shall, prior to entering into such a contract, provide written notice to the other party to the prospective contract of any unsatisfied final judgments against the employer for nonpayment of wages. The notice shall also provide the text of this section. The employer shall provide, within thirty (30) days of the entry of the judgment, written notice of any unsatisfied final judgments against the employer for nonpayment of wages to any parties with which the employer is presently under contract to provide services in the property services or long-term care industries. The failure of the employer to provide such notices shall not be a defense to the joint and several liability provided by this section.

(d) For purposes of this section:

(1) "Property services" means janitorial, security guard, valet parking, landscaping and gardening services.

(2) "Long-term care" has the same definition as in Section 238.4.

SEC. 10. Section 558.1 is added to the Labor Code, to read:

1 558.1. Any person who would be liable for any violation under
2 Section 558 may also be held liable in an action pursuant to Section
3 98, 203, 226, 1193.6, 1194, or 2802.

4 SEC. 11. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.